

ZONING BOARD OF APPEALS

MINUTES

May 17, 2005

Members Present

Barry Silverstein – Chairman
Ronald Critelli
Lynne Raver
Marc Breimer - Alternate
April Callahan - Alternate

Members Absent

Maureen Kangas – Vice Chairman
MaryAnn Leenig

Others Present

Janis Gomez, Esq. – ZBA Attorney
George McGann – Town Building Inspector, Acting Zoning Administrator

Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Chairman Silverstein announced that Alternate Members Marc Breimer and April Callahan as sitting Board Members at this meeting with full voting rights.

Chairman Silverstein called for comments or corrections to the minutes for the April meeting. Hearing none, he called for a motion to accept the minutes as written.

Marc Breimer made the motion to accept the minutes from the April 19, 2005 meeting. Ron Critelli seconded.

Motion Carried

Barry Silverstein - Aye
Ronald Critelli - Aye
Lynne Raver – Aye
Marc Breimer - Aye
April Callahan - Aye

Votes

ZB05-002, Jean-Pierre Baril, Red Schoolhouse Rd

Motion to Grant the variance made by Ronald Critelli

Seconded by Marc Breimer

Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Ronald Critelli - Aye

Marc Breimer - Aye

April Callahan - Aye

ZB05-002, Joseph Precour, Brookside Rd

Motion to Deny the variance made by Marc Breimer

Seconded by Lynne Raver

Carried

Barry Silverstein - Nay

Lynne Raver - Aye

Ronald Critelli - Nay

Marc Breimer – Aye

April Callahan – Aye

Old Business

Continuation of Public Hearings:

Application Number ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill

Chairman Silverstein announced that the applicant has requested an adjournment until the June meeting. The Chairman called for questions or comments from the floor regarding the appeal. Hearing none, he requested a motion to adjourn the Public Hearing.

Motion to adjourn the Public Hearing made by Lynne Raver

Seconded by Ronald Critelli

Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Ronald Critelli - Aye

Marc Breimer - Aye

April Callahan - Aye

Application Number ZB05-007, submitted by Cranesville Block Company, to construct a 50' silo where the maximum height allowed is 35' in a GB Zoning District. Said request is a violation of Chapter 150-33.B. of the Code of the Town of Fishkill.

Chairman Silverstein announced that the applicant has requested an adjournment until the June meeting. The Chairman called for questions or comments from the floor regarding the appeal. Hearing none, he requested a motion to adjourn the Public Hearing.

Motion to adjourn the Public Hearing made by Ronald Critelli

Seconded by April Callahan

Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Ronald Critelli - Aye

Marc Breimer - Aye

April Callahan - Aye

Application Number ZB05-005, submitted by Rainbow Bridge Pet Cemetery, seeking an interpretation of the GB / R-15 Zoning Districts Regulation regarding pet cemeteries as a permitted use and a crematory as an accessory use.

Represented by – Karen Hagstrom, Esq. Corbally, Gartland, & Rappleyea

Amy Bombardieri, Oswald and Gillespie

Elizabeth Dreeben, Rainbow Bridge Pet Cemetery

Karen Hagstrom presented a package to the Board members containing an original copy of a letter that had been previously faxed to the ZBA along with a letter from Matthews Animal Cremation Division describing their product and pictures of the proposed site.

Ms. Hagstrom stated that as outlined in their letter, their position is that cemeteries are permitted in both the R-15 and GB Zoning Districts. The term “cemetery” is intended to be a broad term and that any ambiguities in the law are resolved against the municipalities and in favor of the property owner. If the drafters of this code had intended to limit it to human cemeteries, they would have drafted it as such.

Ms. Hagstrom advised that her client did research the pet cemeteries and discovered that the pet cemetery in Hartsdale is very similar to the situation here. Their code is very similar in that it just lists a cemetery as permitted in a similar zone. The Hartsdale cemetery is also in a mixed Residential and Business Zone. The cemetery has been there for several years in 1986 they petitioned to add a crematorium. They made the same arguments then as the Applicant is making here today and they were approved. The argument that Hartsdale made was that when you look at the various areas of the law, such as the Real Property Tax Law or the Not For Profit Corporation Law, which is a key one because that is the most direct analogy that deals with human cemeteries, the definitions include crematories. The reason is that they are talking about the disposal of a body, whether by cremation, burial or other means. All of the regulations including the

IRS Codes treat them equally. It is the position of the Applicant that the crematory is part of the principal use, which is permitted in both of the Zoning Districts under the Regulations for the Town of Fishkill.

Ms. Hagstrom advised that both of the Applicants are present along with Amy Bombardieri from the engineering firm to answer any questions. Ms. Hagstrom advised that she has spoken with Janis Gomes to discuss concerns regarding emissions and other issues that are actually concerns for the Planning Board. If interested, they have pictures of various crematories at some of the pet cemeteries. Ms. Hagstrom stated that in the packet that she handed out there is a picture of what the Applicants have proposed their crematory to look like. Ms. Hagstrom asked the Board Members if they had any questions.

Chairman Silverstein deferred to Marc Breimer whose questions (from the previous meeting) had been regarding the crematory. Mr. Breimer stated that everything seemed to be in order and that there was some very good information presented. Ms. Hagstrom stated that they did a lot of research regarding this and discovered that there isn't very much case law regarding it. Part of the reason for that may be that once operational, they are smokeless, odorless and noiseless and residents in the area of one crematoriums didn't know that it was operational. Mr. Breimer stated that it had been his only concern. With the burning of organic materials you tend to think of plumes of smoke and having it in a residential community. The emissions controls on these facilities are very advanced.

Chairman Silverstein called for additional questions from the Board.

Janis Gomez advised that Ms. Hagstrom faxed a draft copy of the letter submitted to the Board and she researched the case that was cited. The case did state exactly what Ms. Hagstrom stated it did and Ms. Gomez advised the Board that she is going to research the other items cited and she has an emailed a contact in the Department of State that deals with cemeteries. There is a question regarding the pet cemetery code that may not be relevant to this situation, but Ms. Gomez would like to research it.

Ms. Gomez advised the Board that she could produce an opinion based on the information presented at this meeting. Chairman Silverstein stated that Board could vote to close the Public Hearing. Ms. Hagstrom stated that if it is closed and Ms. Gomez discovers something that needs answering, she would like to make sure that they have the opportunity to respond to it. The Chairman stated that there is no problem in keeping it open although it would delay it another month. Ms. Gomez stated that the Public portion could be closed but the Applicant may continue to submit materials.

Ronald Critelli asked the size the crematory. Elizabeth Dreeben responded that the unit would be eleven feet by three feet. Mr. Critelli surmised that it would not be large enough for a pet horse. Ms. Dreeben stated that the weight capacity is three hundred pounds but would not be long enough for something that big. Mr. Critelli advised that the units that he is familiar with are in Florida and are geared more for cats and dogs. Ms. Dreeben stated that there are units that size, but it is not what they are looking for. This is the smallest unit that they have.

Marc Breimer produced the computer-generated photo presented by Karen Hagstrom. He asked if this was where the unit will be housed. Ms. Dreeben stated that it will look like a garage. It will be a twenty-two by twenty-seven. Janis Gomez reminded the Board that it is ok to ask these questions, but to remember that the Planning Board will have site plan approval. Chairman Silverstein agreed and stated that the ZBA will decide if it fits into the zoning.

Chairman Silverstein opened the questions and comments to the floor.

Russ O'Malley stated that he has the property adjacent to the Applicant. He asked where the closest crematory currently is. Ms. Dreeben responded that it is in Hartsdale. Mr. O'Malley asked if all of the veterinarians in the region would bring deceased animals to their incinerator. Ms. Hagstrom stated that are crematoriums in veterinary facilities. She advised that she owns a cat and uses the Rhinebeck Animal Hospital and they have a crematory on site. Ms. Dreeben stated that several veterinarians use Hartsdale and there is another place in Connecticut.

Mr. O'Malley expressed concern that chemicals, such as formaldehyde, which are used in funeral homes, is a known cause of cancer. He asked what types of chemicals are going to go into the ground. Ms. Dreeben stated that chemicals are used in humans. Animals are not embalmed. There are no chemicals going into the ground. It is completely natural. Ms. Hagstrom advised Mr. O'Malley that the project will be going before the Planning Board and they will do a complete environmental analysis. Mr. O'Malley expressed concern that after years of burials what may get into the water supply because they have a well. Ms. Dreeben stated that residents that bury their pets in their backyards pose a greater danger. Their burials will be in containers.

Mr. O'Malley asked if the property is not fenced, what are the hours of operation and what provisions will be in place to keep people out after hours. Ms. Dreeben advised that the hours will be a standard nine to five timeframe, six days a week. She stated that when they are closed that they may place a chain across the driveway to keep traffic out. People will be able to walk in to visit their pets.

Chairman Silverstein reiterated that additional questions may be addressed to the Planning Board presuming that the project goes forward.

Nannette O'Malley asked if the crematory will have the same type of hours or will it operate at night. Ms. Dreeben advised that it will only operate when they are there. Ms. Hagstrom again stated that to her knowledge, they are noiseless. Ms. Dreeben confirmed this at stated that there is no odor or smoke. Ms. O'Malley asked what happens if there was a malfunction. Ms. Dreeben advised that the unit has an automatic shut off and will shut itself down.

Edward Hutchinson asked if something is being burned how is it that there is no smoke. Ms. Dreeben stated that what is being burned is all natural. No plastics or chemicals. The system has filters to create what is called a clean burn.

Mr. Hutchinson asked who is responsible for the filters. Ms. Dreeben responded that they will be responsible for maintaining everything on the machine.

Chairman Silverstein reminded the Floor that the ZBA is not involved with the approval of the site plans and they will have ample time if it goes forward.

The Chairman called for additional questions. Hearing none, he asked if they can close the Hearing. Janis Gomez stated that the Hearing may be closed and the Applicant will still be able to submit additional information.

Chairman Silverstein requested a motion to close the Public Hearing

Motion to close the Public Hearing was made by Marc Breimer

Seconded by Ronald Critelli

Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Ronald Critelli - Aye

Marc Breimer - Aye

April Callahan - Aye

New Business

Appeal #1

Application No. 2004-008, submitted by Richard Cabo and Hadassa Rosenkrantz, who are requesting a variance to construct a 15' x 18' addition creating a 7' side yard set back where 20' is the minimum in an R-20.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-33.A. of the Code of the Town of Fishkill, New York.

Chairman Silverstein read a letter from Aspasia Mularadelis. Ms. Mularadelis wrote that she is the adjacent neighbor to the Applicants. She approves of the project with the following conditions:

1. All current building, electrical, plumbing and fire codes be followed and permits be applied for and approved.
2. The new construction will not encroach any closer to the property line than current structure.
3. The property line is the surveyed line and not the fence that currently separates the two houses.
4. Drainage is directed away from her property to prevent the pooling of water in the space between the two houses.
5. Any damage to her property or fence during the construction is covered by either the builder's or neighbor's insurance.
6. Permission to access her property during construction is requested in advance.

Represented by - Richard Cabo, Applicant

Mr. Cabo advised the Board that they submitted the application because they have two children and just had another baby. When they saw the house, they knew it was slightly small but they loved the area and now they would eventually build it out. One of the reasons that they can't build lower in the ground is because the house is on a slant and there is moisture in the basement. Mr. Cabo stated that he currently runs a de-humidifier and in speaking with his architect, it was suggested that Mr. Cabo build out because the house is older and was originally built like a cottage. It would be difficult to place a second floor on the house. It would require restructuring the original first floor.

Mr. Cabo stated that they are requesting the addition for more family room and he will take the office that he has and use it for the baby.

Chairman Silverstein requested verification that the property line that is mentioned is the surveyed line and not the fence. Mr. Cabo confirmed this and advised the Board that the reason he is asking for the seven foot setback was that after discussing it with (Building Inspector) Ed Peters he measured to the fence and it was seven feet nine inches and his survey noted it at seven feet three inches. He requested the seven feet as a safety net to avoid problems down the road. Mr. Cabo also spoke with Ms. Mularadelis and she advised him that when the fence was installed they deliberately placed the fence six inches closer on their property to avoid any problems if the fence needed to be serviced.

Mr. Cabo advised the Board that there is a system in place to move the water runoff down a cement wall into a tank and then is distributed into the backyard.

Chairman Silverstein questioned the process of the construction. Mr. Cabo stated that they will not need to access the neighbor's property.

The Chairman called for questions from the Board Members.

Marc Breimer asked what the current setback is for the house. Mr. Cabo advised that it is seven feet three inches and Ms. Mularadelis' house is four feet from the fence.

Ronald Critelli produced a GIS picture of the property and asked Mr. Cabo if he was going to fill in this particular section of the house. Mr. Cabo confirmed that he was.

George McGann advised that the Applicant will not encroach any further into the setback. He will only be extending the current wall.

Janis Gomez asked what the setbacks are for the property since they are not listed on the application and why this location for the construction was chosen over another. Mr. Cabo advised that the septic lines extend on the other side of the house and this location can be tied into the existing kitchen as an entranceway.

Lynne Raver asked what the property just to the right of the house is. Mr. Cabo advised that the narrow strip actually belongs with the property behind it and he is currently in negotiations to purchase it. Mr. Cabo advised that he had heard that there was going to be a development behind his property and before it happens, he wants to purchase additional land. Mr. Cabo advised that the narrow piece is his driveway and that the property behind it was landlocked. George McGann advised that the narrow strip would be a flag to the rear property for access onto Route 9D. Janis Gomez asked which property numbers were being discussed. Chairman Silverstein stated for the record that the properties being discussed were the Applicant's 843791, the access road is 844795, and asked Mr. Cabo if the rear lots (831794 and 819794) were the ones he wants to purchase. Mr. Cabo corrected the Chairman and stated that he already owns those lots and is in negotiations to purchase the additional lot (828806).

Chairman Silverstein called for additional questions from the Board Members or the Floor. Hearing none, he requested a motion to close the Public Hearing.

Motion to close the Public Hearing was made by Ronald Critelli

Seconded by Marc Breimer

Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Ronald Critelli - Aye

Marc Breimer - Aye

April Callahan - Aye

The Chairman advised Mr. Cabo that the Board Members will vote on the variance at the next meeting. Mr. Cabo asked the date for the next meeting. Nancy Lecker advised that the next meeting will be on June 21st. Janis Gomez advised that Mr. Cabo does not have to come if he doesn't want to.

The Chairman asked the Board Members if they want to discuss the application any further.

George McGann advised the Members that there is a discussion in the Building Department regarding the merits of Chapter 150-17 regarding the increase of a nonconformity. This situation has arguments in both directions. The Applicant is not going to be any closer than the house currently is, however it is construction to the back so there is an interpretation that the wall now becomes longer and it is an increase on the nonconformity. The other interpretation is that he is no closer to the property line so it isn't an increase. The reason the Applicant is here is because it is going to double the size of the wall and it is better to be safe.

Ronald Critelli asked when the house was built. Mr. McGann stated that the house may be pre-code. Mr. Critelli asked if at that time if a seven foot setback was ok. Mr. McGann stated at that time there were no setbacks.

Marc Breimer asked when the zoning law went into affect. Mr. McGann responded that it was December 1962.

Chairman Silverstein requested a motion to adjourn the ZBA Meeting.

Ronald Critelli made the motion to adjourn.

Marc Breimer seconded.

Motion carried.

Meeting adjourned at 7:34 pm.

Respectfully submitted,

Nancy Fitzgerald-Lecker
ZBA Clerk